

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY DeFRANCO,)	
)	
Plaintiff,)	
)	Civil Action No. 04-230-ERIE
V.)	
)	Judge Maurice B. Cohill, Jr.
SUPERINTENDENT WILLIAM WOLF;)	Mag. Judge Susan P. Baxter
STEVE REILLY; DENESE BRUNNER;)	
MANAGER ROD SHOWERS; CASE)	
MANAGER JUDY JACKSON;)	
DR. JOHN DOE; JANE DOE, JEFFREY)	
BEARD; ASSIST. SUPER. WILLIAM)	
BARR; MARILAND BROOKS,)	
)	
Defendants.)	

**DEFENDANTS' MOTION FOR LEAVE TO FILE ADDITIONAL EXHIBIT IN
SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

AND NOW, come the defendants, William Wolfe, Steve Reilly, Denise Bunner, Rod Showers, Judy Jackson, Jeffrey Beard, William Barr, and Marilyn Brooks, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Mary Lynch Friedline, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and request leave to file an additional exhibit in support of their Cross-Motion for Summary Judgment:

1. During a telephone hearing on August 24, 2006, this Court granted in part plaintiff's motion to compel, directing defendants to furnish plaintiff with a transcription of notes by Dr. Polmueller, Psychiatric Director for the Department of Corrections. Plaintiff contended that these notes, and his conversation with Dr. Polmueller, could be relevant to his Z-code claim.
2. Defendants subsequently contacted Dr. Polmueller, who is employed by MHM Corrections Services. Dr. Polmueller has provided a declaration with a transcription of his

progress notes from April 30, 2004. This declaration has been forwarded to plaintiff DeFranco and is attached hereto as defendants' Exhibit 14.

3. Dr. Polmueller explains that the reference to "double celled" was **a subjective observation, reflecting what the inmate himself said**, rather than an endorsement or recommendation on the doctor's part. (Exh. 14, ¶3.) Dr. Polmueller further describes factors that could warrant a psychiatric recommendation for single cell status (such as dangerous behavior derivative of a serious mental illness), noting that such factors were not indicated or were "questionable" in DeFranco's case. *Id.*

4. Defendants seek leave to submit this Declaration as an additional exhibit in support of their Cross-Motion for Summary Judgment and supporting brief (Doc. 201, 204), as it is highly relevant to the issue of deliberate indifference (see § II.A(2), p. 21 of defendants' brief).

WHEREFORE, defendants respectfully request that this Court accept and consider the attached Exhibit 14 in connection with defendants' Cross Motion for Summary Judgment.

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

By: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General
Attorney I.D. No. 47046
Susan J. Forney
Chief Deputy Attorney General
Litigation Section

Office of Attorney General
6th Fl., Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
Date: September 5, 2006

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2006, I electronically filed the foregoing Defendants' *Motion for Leave to file Additional Exhibit in Support of Cross-Motion for Summary Judgment* with the Clerk of Court using the CM/ECF system. This document will be mailed via U.S. mail to the following non CM/ECF participants:

Anthony DeFranco, CZ-3518
SCI-Albion
10745 Route 18
Albion, PA 16475-0001

By: /s/ Mary Lynch Friedline
MARY LYNCH FRIEDLINE
Senior Deputy Attorney General

Office of Attorney General
564 Forbes Avenue
Manor Complex
Pittsburgh, PA 15219